



U.S. Department of Justice

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March 20, 2020

ECF

Honorable Eric R. Komitee
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, NY 11201

Re: United States v. Frantz Metellus,
Criminal Docket No. CR-08-0332 (EDNY)

Dear Judge Komitee:

This letter is respectfully submitted as directed by Your Honor to address the issue of the interplay between a court-imposed payment plan and the lien that arises upon entry of a restitution judgment under 18 U.S.C. § 3613 (c). As set forth below, the restitution lien does not conflict with a court-ordered payment plan. Moreover, where, as here, defendant has ceased paying restitution or has defaulted, “the entire amount of the fine or restitution is due within 30 days after notification of the default, subject to the provisions of section 3613A.” 18 U.S.C. § 3572 (i). See also 28 U.S.C. § 3205 (b)(1)(B) (in an application for a writ of garnishment the United States shall state that at least 30 days has elapsed since demand for payment of the debt was made and that the judgment debtor has not paid the amount due).¹

Applicable Law

The restitution judgment imposed against the defendant is governed by the Mandatory Victim’s Restitution Act (the “MVRA”), which provides that “[i]n each order of restitution, the court shall order restitution to each victim in the full amount of each victim’s

¹ As set forth in further detail below, The Federal Debt Collection Procedure Act, 28 U.S.C. § 3001, *et seq.*, (the “FDCPA”) is applicable to the enforcement of a criminal restitution judgment. Garnishment is one of the remedies available under the FDCPA.

losses as determined by the court and without consideration of the economic circumstances of the defendant.” 18 U.S.C. § 3664(f)(1)(A).

Consistent with the goals of the MVRA, that is, to ensure that victims will receive restitution, the statute provided enhanced enforcement methods and specifically provides that:

The United States may enforce a judgment imposing a fine in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law. Notwithstanding any other Federal law (including section 207 of the Social Security Act), a judgment imposing a fine may be enforced against all property or rights to property of the person fined.

18 U.S.C. § 3613(a)(exceptions omitted). Accordingly, for example, the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001, *et seq.*, (the “FDCPA”)² is available for enforcement of criminal restitution judgments and provides that “judgments may be enforced by any of the remedies set forth in this subchapter.”³ In addition, “[a] court may issue other writs pursuant to section 1651 of title 28, United States Code, as necessary to support such remedies, subject to rule 81(b) of the Federal Rules of Civil Procedure.” 28 U.S.C. § 3202(a).

Upon entry of a judgment, a lien arises in favor of all property and rights to property of the person against whom the judgment was entered in the same manner as a liability for a tax assessed under the Internal Revenue Code of 1986. 18 U.S.C. § 3613(c). The lien continues for 20 years or until the judgment is satisfied, remitted, set aside, or is terminated under 18 U.S.C. § 3613 (b). The statute provides that upon filing of a notice of the lien,

the lien shall be valid against any purchaser, holder of a security interest, mechanic’s lienor or judgment lien creditor.... The notice of lien shall be considered a notice of lien for taxes

² The FDCPA, which provides civil procedures for the United States to seek recover on a debt, includes, in its definition of a debt, an amount owing to the United States on account of a fine, assessment, and restitution. 28 U.S.C. §§ 3001(a); 3002(3)

³ The Federal Rules of Civil Procedure apply with respect to actions and proceedings under the FDCPA. 28 U.S.C. § 3003(f).

payable to the United States for the purpose of any State or local law providing for the filing of a notice of a tax lien.

18 U.S.C. § 3613(d). Thus, the government is entitled to a lien on the defendant's property regardless of whether she has defaulted on her restitution and irrespective of a payment plan. *United States v. Cabral*, (No. 11-224 (BAH)), 2017 WL 2562295, at *3 (D.C., June 13, 2017)(unpublished opinion, noting that although the government may be precluded from using some of the enforcement mechanisms for enforcing a restitution judgment while a payment plan is in effect, it is entitled to its lien). Consistent with the right and ability of the United States to enforce the judgment through the restitution lien, the MVRA also provides that a victim may request that the Clerk of the Court **shall** issue an abstract of judgment. Upon recording the abstract, it shall be a lien on defendant's property. 18 U.S.C. 3664(m)(1)(B).

By asserting its lien and using it to collect the proceeds of the sale of defendant's property, the government is using one of its most important and effective enforcement remedies, a remedy specifically provided by statute. Were the United States prohibited from asserting its lien, the provisions of section 3613 describing the existence, breadth and duration of the lien, would be rendered meaningless. 'A court may not construe a statute in a manner that renders part of the law superfluous.' *United States v. Perry*, 360 F.3d 519 (6th Cir. 2004)(other citations omitted)(deciding that district court had no authority under the All Writs Act to vacate a restitution lien).

Based on the foregoing, the government is entitled to its lien.

Respectfully submitted,

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